

NO. 43462-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO


STATE OF WASHINGTON,

Respondent,

v.

DARRYL AUSTIN SATCHER,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
2013 MAR 15 AM 10:48
STATE OF WASHINGTON
BY  DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Bryan E. Chushcoff

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. PART OF THE STATEMENT OF THE CASE
VIOLATES RAP 10.3(a)(5) AND SHOULD NOT
BE CONSIDERED BY THIS COURT.

Under RAP 10.3(a)(5), the Statement of the Case should contain “[a] fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.”

It is apparent that the declaration for determination of probable cause, which is not “relevant to the issues presented for review,” was designated by the State for the purpose of portraying Mr. Satcher as a bad person. The State cites only select portions of the probable cause declaration, omitting Satcher’s explanation to the police, which is not a “fair statement” of the record. Brief of Respondent at 1-2.

Furthermore, the State misstates the contents of the probable cause declaration. Brief of Respondent at 1-2. Its misstatements include the following:

Defendant got into the rear passenger seat of Phillips’ car next to Moura and Plunkett; Phillips was in the driver’s seat. Defendant shot Plunkett several times before going through his pockets, taking \$700 in cash.

Brief of Respondent at 1.

The declaration of probable cause actually states that Phillips told police that Moura was seated in the front passenger seat. Phillips heard “several bangs from the backseat” and saw Satcher “holding Plunkett close and fire shots into Plunkett’s body.” Satcher went through Plunkett’s pockets and “took property from Plunkett.” CP 79.

The State also incorrectly asserts that:

Defendant demanded Moura and Phillips to give him all of their money, drugs, and cell phones. Defendant put his gun to Phillips’ head and told her to keep driving or he would shoot her.

Brief of Respondent at 2.

The declaration of probable cause actually states:

SATCHER then put the gun to Phillips’ and Moura’s heads. SATCHETT (sic) told Phillips that if she turned around again Phillips would be next. SATCHER told Moura to give SATCHER her drugs, money and cell phones, specifically the cell phone used to arrange for the drug deal. Moura complied.

SATCHER told Phillips to drive further at which point SATCHER order[ed] Phillips to stop.

CP 79-80.

The State also argues without citing to the record:

At defendant’s plea hearing, the court engaged in a thorough colloquy with defendant to dispel any confusion expressed by him and ensure that he understood the consequences of his guilty plea.

Brief of Respondent at 2.

Such an argument is improper under RAP 10.3(a)(5), which precludes argument and requires reference to the record.

2. SATCHER'S GUILTY PLEA IS CONSTITUTIONALLY INVALID WHERE IT WAS NOT KNOWING, VOLUNTARY, AND INTELLIGENT UNDER THE TOTALITY OF THE CIRCUMSTANCES.

The State's argument that Satcher's guilty plea was knowing, voluntary, and intelligent is refuted by the record and the totality of the circumstances. Brief of Respondent at 6-10.

"[T]he record of a plea hearing must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of such a plea." Wood v. Morris, 87 Wn.2d 501, 502-03, 554 P.2d 1032 (1976). "Whether a plea is knowingly, intelligently, and voluntarily made is determined from a totality of the circumstances." State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996).

The record substantiates that Satcher was confused, defense counsel failed to properly communicate with Satcher before the plea hearing, and the Statement of Defendant on Plea of Guilty contained material errors. See Brief of Appellant at 3-8. Under the totality of the circumstances, the record discloses an invalid plea, not a voluntary plea. Satcher was clearly not sufficiently aware of the consequences of the plea. Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d

747 (1970)(pleas must be knowing, voluntary, and intelligent acts done with sufficient awareness of the likely consequences). The record establishes that the trial court failed to fulfill its duty to ensure that Satcher's plea was made voluntarily, competently, and with an understanding of the consequences of his plea before accepting his plea. CrR 4.2(d).

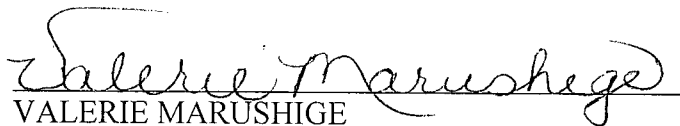
B. CONCLUSION

"That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized." Brady, 397 U.S. at 748.

For the reasons stated here and in appellant's opening brief, this Court should vacate Satcher's constitutionally invalid plea and remand to the trial court for a hearing before a different judge.

DATED this 14th day of March, 2013.

Respectfully submitted,

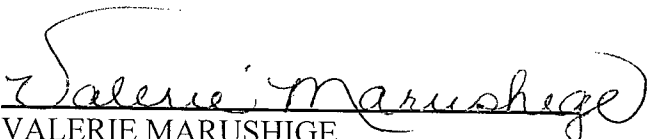

VALERIE MARUSHIGE
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Attorney for Appellant, Darryl Austin Satcher


DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kimberley DeMarco, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of March, 2013 in Kent, Washington.


VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

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